

CHAPTER 06

COURT-RELATED ACTIVITIES

**CHILDREN'S ADMINISTRATION
INDIAN CHILD WELFARE MANUAL
CHAPTER 06—COURT-RELATED ACTIVITIES**

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06.01 INTRODUCTION

- A. This chapter contains very specific procedural requirements that Children's Administration (CA) staff must follow when the child involved in a child welfare case is an Indian child as defined in chapter 03, section 03.05(A). CA staff must follow all necessary procedures in chapter 03 to ensure compliance with federal and state law. See chapter 03 for information about verification of Indian status.
- B. If CA or child placing agency (CPA) social workers fail to comply with the procedural requirements in this chapter, the court may set aside court orders as invalid. Parties to invalid adoptions may challenge the adoptions, and the court may vacate the adoption after entry of the adoption decree.
- C. In addition to the requirements of this Chapter, the CA social worker must follow the requirements of the CA *Practices and Procedures Guide*, chapters 2000, 3000 and 4000. If conflict exists between the provisions of this manual and the *Practices and Procedures Guide*, the social worker must follow the requirements of this chapter, when consistent with statutory requirements.
- D. Except as specifically provided, this chapter does not apply to Canadian First Nations Indian children or to Recognized Indian Children. See Chapter 11 for information about Canadian and Recognized Indian Children.

06.05 INDIAN AFFILIATION

Upon acceptance of a case for service, the social worker must immediately seek to verify if the involved child is an Indian child as defined in chapter 03, section 03.05(A). Chapter 03 contains procedures for making that verification. The social worker must carefully follow the procedures in Chapter 03 so that all subsequent legal actions conform to federal and state law.

06.10 JURISDICTION

- A. Jurisdiction is an important concept in working with Indian Tribes and is generally defined as the authority of a sovereign power to govern those within its territorial or reservation boundaries. Indian Tribes are sovereign powers and have the ability to govern Indian people who are resident or domiciled within the boundaries of their reservations, even if such persons are located off the reservation.
- B. Jurisdiction over Indian child custody proceedings can be exclusive to a Tribe or concurrent with the state. See the definition of "child custody proceedings," in chapter 14 of this manual. Dependency, voluntary foster care placement, Child In Need of Services (CHINS), guardianship, termination, voluntary relinquishment, and adoption proceedings are child custody proceedings.
- C. If the Tribe has **exclusive jurisdiction**, the Tribe has sole authority over the disposition of child custody proceedings involving Indian children who reside or are domiciled within the boundaries of its reservation. If the Tribe has **concurrent jurisdiction** with the state, the Tribe and the state both have authority over child custody proceedings involving Indian children who reside or are domiciled within the boundaries of the tribal reservation. See Chapter 14 for the definition of "domicile" and "residence."
 - 1. The Tribe not only has jurisdiction over its own child members who are resident/domiciled on the reservation, the Tribe also has jurisdiction over Indian children from other Tribes who are resident/domiciled on the reservation.
 - 2. A child's residence or domicile is generally deemed to be that of the parent(s) or legal custodian, but the Tribe makes the determination.
- D. The state has jurisdiction over child custody proceedings involving Indian children who are not resident of or domiciled within the boundaries of an Indian reservation.

- E. Even if the state exercises jurisdiction in a case, an Indian child's Tribe has the right to request that the state transfer the case to tribal court jurisdiction. See section 06.35 for information about transfer of jurisdiction to the tribal court.
- F. Regardless of whether a Tribe has exclusive or concurrent jurisdiction over child custody proceedings, the Tribe always has exclusive jurisdiction over Indian children who are wards of the tribal court.
- G. A Tribe with exclusive jurisdiction may request that the state take jurisdiction in a specific case. CA, in consultation with assigned legal representation, determines if it will then assume jurisdiction.

**06.15 FEDERALLY RECOGNIZED WASHINGTON STATE TRIBES –
EXCLUSIVE, CONCURRENT, AND SELF-GOVERNANCE
JURISDICTION**

- A. For purposes of applying the requirements of this manual, the following Washington State Tribes have **exclusive jurisdiction** over child custody proceedings involving Indian children who are resident or domiciled within the reservation boundaries.
 - Colville
 - Jamestown S'Klallam
 - Lower Elwha Klallam
 - Muckleshoot
 - Nisqually (exclusive jurisdiction only applies on reservation holdings acquired after 1968)
 - Nooksack
 - Port Gamble S'Klallam
 - Quileute
 - Samish
 - Sauk-Suiattle
 - Spokane
 - Upper Skagit
 - Yakama

- B. For purposes of applying the requirements of this manual, the following Washington State Tribes have **concurrent jurisdiction** with the state over child custody proceedings involving Indian children who reside or are domiciled within the boundaries of the reservation.

Tribes set forth in this list may disagree with the "concurrent jurisdiction" designation and may, in some cases, claim exclusive jurisdiction status. If this happens, the social worker must contact the Office of the Attorney General office or other appropriate legal representative for assistance in resolving jurisdictional issues.

- Chehalis
- Hoh
- Kalispel
- Lummi
- Makah
- Nisqually (concurrent jurisdiction only applies on reservation holdings acquired before 1968)
- Puyallup
- Quinault
- Shoalwater Bay
- Snoqualmie
- Squaxin Island
- Stillaguamish
- Suquamish
- Swinomish
- Tulalip

C. LIST OF SELF GOVERNANCE TRIBES AS OF DECEMBER 1997

Jamestown S'Klallam	Superintendent (360) 533-9100
Lower Elwha	Superintendent (360) 533-9100
Lummi Indian Nation	Superintendent (425) 258-2651
Makah	Self-Govt. Specialist (360) 645-2201
Muckleshoot	Superintendent (425) 258-2651
Nisqually	Superintendent (425) 258-2651
Nooksack	Superintendent (425) 258-2651
Port Gamble	Superintendent (425) 258-2651
Quinault Indian Nation	Superintendent (360) 533-9100
Shoalwater Bay	Superintendent (360) 533-9100
Skokomish	Superintendent (360) 533-9100
Squaxin Island	Superintendent (360) 533-9100
Suquamish	Superintendent (425) 258-2651
Swinomish	Superintendent (425) 258-2651

**06.20 VERIFICATION OF TRIBAL OR STATE COURT JURISDICTION
- ALL FEDERALLY RECOGNIZED TRIBES**

Except for emergency cases as provided for in section 06.60, the social worker complies with the following procedures before seeking to initiate in state court any child custody proceeding that involves an Indian child.

- A. In order to determine if the social worker should file a child custody action in state court or assist a parent to obtain state court validation of a voluntary consent to placement, termination, or adoption, the social worker seeks to verify if:
1. The Indian child is a ward of tribal court; or
 2. The child is domiciled or residing on an Indian reservation.

- B. The social worker contacts the child's Tribe about tribal court wardship. If the social worker has reason to believe that the child is a ward of a tribal court other than that of the child's Tribe, the social worker also contacts the other tribal court. If the child is a ward of tribal court, that Tribe has exclusive jurisdiction.
 - 1. In non-emergency cases involving an Indian child who is a ward of tribal court, the social worker does not file a state court action but refers the case to the appropriate tribal authorities.
 - 2. In non-emergency cases involving Tribes with concurrent jurisdiction, the social worker follows the procedures in section 06.25. If the Tribe does not wish to assert jurisdiction, the social worker files an action in state court according to Washington State law.
 - 3. The social worker may file an action in tribal court only at the Tribe's request.
 - 4. In emergency cases, the social worker follows the procedures in section 6.60, below.
 - 5. The social worker documents contacts with the Tribe(s) in the ICW section of the family's service record.
- C. The social worker immediately contacts the child's Tribe about domicile or residence. If the social worker has reason to believe that the child's domicile or residence is on the reservation of a Tribe other than the child's Tribe, the social worker also contacts the other Tribe. The social worker documents contacts with the Tribe(s) and the Tribe's position regarding the child's domicile/residence in the service record and reports to court.
- D. Prior to filing a court action in state court, the social worker:
 - 1. Asks the parent to identify the parent's and the child's residence and domicile; and

2. Asks the Tribe to identify the parent's and the child's legal residence and domicile.
- E. If the social worker identifies a conflict between the parent's assertion and the Tribe's determination concerning domicile, the Tribe's determination resolves the issue.
- F. If the social worker verifies that the parent and/or child are domiciled on the reservation, the social worker does not file a court action in state court, unless the Tribe does not have a tribal court.
- G. If the Tribe determines that the parent/child are not residing nor domiciled on the reservation, the social worker may file a court action in state court according to Washington state law.
- H. The social worker follows all notice requirements and other procedures set forth in this chapter whenever the worker commences a state court proceeding involving an Indian child.
- I. In cases where the Tribe has exclusive jurisdiction or exercises concurrent jurisdiction over a child custody matter involving an Indian child, the social worker provides available information and documentation that may be necessary to help the Tribe commence or pursue a child custody proceeding in tribal court.
- J. If, due to the circumstances of a particular case, the social worker cannot contact the child's Tribe or verify the child's wardship status, residence, or domicile prior to filing a child custody action in state court, the social worker must make immediate and continuing efforts notify the Tribe after filing.

**06.25 SPECIAL REQUIREMENTS FOR FEDERALLY RECOGNIZED
WASHINGTON STATE INDIAN TRIBES WITH CONCURRENT
JURISDICTION**

- A. Except for emergency cases, the social worker must follow the special requirements in this section in all cases involving Indian children who reside or are domiciled within a reservation of a Washington State Indian Tribe with concurrent jurisdiction over child custody proceedings. See section 06.15(B) for a list of concurrent jurisdiction Tribes in Washington.
- B. A social worker refers matters regarding Indian children who reside or are domiciled within a concurrent jurisdiction Indian reservation to appropriate tribal authorities, so that the child custody proceedings may be commenced in tribal court.
- C. If a child resides or is domiciled within a concurrent jurisdiction reservation, the social worker notifies the child's Tribe by registered mail return receipt requested of the social worker's intent to file a state court action and of the date that the action will be filed. A social worker:
 - 1. Does not file a state court action if a child custody proceeding has already been filed in tribal court;
 - 2. Sends notice to the child's Tribe at least five business days prior to filing any state court action; and
 - 3. Includes along with the notice a copy of all documents and records supporting the necessity of initiating a child custody proceeding.
- D. If a social worker receives notification or has knowledge that a tribal court has commenced a child custody proceeding, the social worker does not file a child custody proceeding in state court and, upon timely request by the Tribe, assists the tribal court in adjudicating the case. See section 6.40 regarding the assistance social workers will provide in tribal court proceedings.

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- E. A CA social worker does not file an action in tribal court unless requested to do so by the Tribe.

**06.30 RECORD KEEPING/JURISDICTIONAL VERIFICATION - ALL
FEDERALLY RECOGNIZED TRIBES**

- A. A social worker keeps a record in the ICW section of the service file on a case-by-case basis of the inquiries the worker made to verify whether a child is a ward of the tribal court. The worker also keeps a record of the facts considered in reaching a decision that a child is or is not a resident of or domiciled on the reservation of a federally recognized Indian Tribe.
- B. A social worker provides a copy of the child's record, upon request, to the Indian child's Tribe, parent or Indian custodian. and any *guardian ad litem* appointed to represent the child.
- C. A social worker also provides a copy of the record to any Indian Tribe that claims the Indian child as a ward of its tribal court and to any Indian Tribe that claims the Indian child to be resident/domiciled on the Tribe's reservation.

**06.35 TRANSFER OF JURISDICTION FROM STATE COURT TO
TRIBAL COURT - ALL FEDERALLY RECOGNIZED TRIBES**

- A. Following the commencement in state court of a child custody proceeding involving an Indian child, the child's Tribe, parent(s), or the child's Indian custodian may petition or request transfer of the proceeding to tribal court. The CA social worker sends *Motion and Order to Transfer Jurisdiction to Tribal Court*, DSHS 09-547, or *Tribal Court Motion and Order to Accept Jurisdiction*, DSHS 09-548, to the Tribe for its use for these purposes.
- B. A CA social worker must not encourage the child's parent or Indian custodian to object to transfer of jurisdiction.

- C. Upon petition/request, state court must transfer the proceeding to tribal court unless the state court finds good cause to the contrary or unless a child's parent or Indian custodian objects to the transfer of jurisdiction.
- D. A CA social worker must not oppose a petition/request for transfer to tribal court without first consulting with worker's immediate supervisor and the assigned Assistant Attorney General or contracted prosecuting attorney. The worker must base any objection on fact.

06.40 TRIBAL COURT PROCEEDINGS - ALL FEDERALLY RECOGNIZED TRIBES

If a child custody proceeding involving an Indian child is filed in a tribal court, the social worker assists the tribal court in adjudicating the case upon timely request by the Tribe. The Tribe must request assistance in a tribal court proceeding sufficiently in advance to allow the social worker the time and opportunity for adequate preparation. Such assistance from the social worker may include:

- A. Provision of available information and documentation that the Tribe may need to pursue a child custody proceeding in tribal court. See chapter 04 regarding confidentiality.
- B. Testimony in a tribal court proceeding. The tribal court should give the CA social worker an opportunity to address the feasibility of the proposed case plan/court order in writing or through testimony.
- C. Preparation of service/placement case plans.
- D. Assistance in implementing tribal court orders regarding services and placements. If the CA social worker cannot implement a tribal court order, the social worker notifies the tribal court in writing as soon as possible.

- E. Agency assumption of the care, custody, and supervision of an Indian child under a tribal court order. If the social worker cannot implement an order for agency care, custody, and supervision of a child, the social worker notifies the tribal court in writing as soon as possible.

06.45 INTERVENTION BY TRIBES

- A. A federally recognized Indian Tribe at any time has the right to intervene as a party in state court child custody proceedings involving children who are members or eligible for membership in a Tribe.
- B. A child's Indian custodian has the right to intervene in such proceedings. See Chapter 14 for definition of "Indian custodian."
- C. A Canadian First Nations or Recognized Indian child's Tribe or band may seek intervention pursuant to Superior Court Civil Rule 24 (CR 24). See Chapter 11 regarding tribal intervention in child custody proceedings involving Recognized Indian Children.
- D. A social worker supports a request for intervention filed by a child's Tribe or Indian custodian.

06.50 VOLUNTARY CONSENT TO FOSTER CARE PLACEMENT

06.501 INTRODUCTION

- A. A CA social worker does not make a voluntary placement of an Indian child in foster care until the worker has:
 - 1. Followed the procedures in sections 06.10 through 06.40 regarding verification of tribal jurisdiction and special requirements applying to federally recognized Washington State Indian Tribes; and
 - 2. Notified the Tribe; and

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3. Followed the consent to place procedures described in this section.

B. Voluntary consents to foster care placement are not valid unless the parent signs the consent before a tribal or state court judge more than 10 calendar days after the child's birth and the judge approves the consent.

06.502 CHILD A WARD OF TRIBAL COURT OR RESIDENT/DOMICILED ON AN EXCLUSIVE JURISDICTION INDIAN RESERVATION

A. If a parent or Indian custodian seeks to voluntarily place an Indian child in foster care, the CA social worker asks the parent and Tribe if the child is a ward of tribal court or is a resident or domiciled within the boundaries of an exclusive jurisdiction Indian reservation. Follow procedures outlined in sections 06.10 through 06.40.

B. If the child is a ward of tribal court or resident or domiciled on an exclusive jurisdiction Indian reservation, the social worker:

1. Informs the parent or Indian custodian that the Tribe has exclusive jurisdiction to approve such placements.
2. Assists the parent or Indian custodian, at the request of and in cooperation with the Tribe's social services program, to place the child in foster care or make such other arrangements as may be appropriate under the circumstances.

06.503 CHILD NOT A WARD OF TRIBAL COURT AND NOT RESIDENT/DOMICILED ON AN EXCLUSIVE JURISDICTION INDIAN RESERVATION

A. When a parent or Indian custodian seeks to voluntarily place an Indian child in foster care, and the child is not a ward of tribal court and is not resident/domiciled on an exclusive jurisdiction Indian reservation, the CA social worker informs the parent or Indian custodian of:

1. Placement preference requirements;
 2. Requirements for notification of the child's Tribe and extended family members; and
 3. The requirement for state or tribal court validation of the consent prior to placement. If the social worker has actual or constructive knowledge that the child may be an Indian or Alaska Native, or if the social worker has not verified whether or not the child is such a child, the social worker must obtain court validation of the voluntary consent.
- B. The social worker assists the parent or Indian custodian to contact an Indian interpreter or a representative of the social services program of the child's Tribe to ensure that the consent is voluntary and that the parent or Indian custodian understands what the parent or custodian is doing. See Chapter 14 for definition of "Indian interpreter."
1. The social worker documents such assistance in the ICW section of the service record. If the social worker refers the parent or Indian custodian to an identified individual, the social worker includes in the service record documentation the date of the referral and the name of the individual to whom the worker made the referral.
 2. Upon request, the social worker provides the documentation to the child's Tribe.
- C. The social worker:
1. Encourages the parent or Indian custodian to execute any consent to foster care placement before a tribal court judge if consistent with the practice and procedures of the tribal court for the child's Tribe.

2. Cooperates with the tribal social services program and assists with placement if the tribal court processes the consent to place. See Chapter 6.40 regarding tribal court proceedings.

06.504 INVOLVEMENT OF TRIBAL SOCIAL SERVICES

Prior to accepting a voluntary consent to foster care placement, the social worker:

- A. Encourages the parent or Indian custodian to contact the child's Tribe regarding available services to assist the parent or Indian custodian to retain custody of the child or to maintain the parent-child relationship during placement.
- B. Documents in the ICW section of the service record the worker's efforts to have the parent or Indian custodian contact the child's Tribe regarding available services.
 1. If the social worker refers the parent or Indian custodian to an identified individual within the child's Tribe, the social worker includes in the ICW section of the service record documentation the date of the referral and the name of the individual to whom the worker made the referral.
 2. The social worker provides the documentation to the child's Tribe, upon request.

06.505 EXPLANATION OF CONSENT FORM

- A. The social worker fully explains the consent to place form, *Consent to Foster Care Placement and Court Certification*, DSHS 09-763, to the parent or Indian custodian of an Indian child. The worker uses an Indian interpreter, when possible, to explain the form to the parent/Indian custodian.
 1. The social worker requires the parent or Indian custodian to read the consent form prior to obtaining the parent or Indian custodian's signature on the form.

2. If the social worker has any doubt about the parent or Indian custodian's ability to read and understand the consent form, the worker will read and explain the form to the parent or custodian.
 3. If the social worker or the parent/custodian has any doubt about the parent or Indian custodian's ability to understand English, the worker makes arrangements to have the form read and explained to the parent or Indian custodian in the parent or custodian's primary language.
- B. The social worker obtains the parent or Indian custodian's signature on the consent form acknowledging that the parent or custodian has read the consent form, understands the consent form, and wishes to consent to the child's placement in foster care.
1. The social worker gives a copy of the signed consent form to the parent or Indian custodian.
 2. The social worker explains to the parent or Indian custodian that the consent is not valid until the parent or Indian custodian also signs the form in court and a judge approves the consent.
- C. The social worker does not place the child in foster care until the parent or Indian custodian has signed the consent form in court, and the judge has approved the consent.

06.506 VALIDATION PROCEDURES

The CA social worker must comply with the following consent to place procedures:

- A. When the social worker obtains the signature of an Indian child's parent or Indian custodian on a consent to place form, DSHS 09-763, the social worker immediately sends copies of the signed form, by registered mail, return receipt requested to:

1. The child's Tribe:
 2. The non-consenting parent (including any alleged father); and
 3. The child's Indian custodian, if any.
- B. The social worker does not file the petition for validation of the voluntary consent until at least five business days after sending copies of the signed form to the child's Tribe and to the non-consenting parent or Indian custodian.
1. If circumstances require a shorter time period, the social worker provides the Tribe and non-consenting parent or Indian custodian with telephone notice of the consent.
 2. The social worker gives telephone notice far enough in advance to allow the tribal representative time to communicate with the parents or Indian custodian and for the tribal representative and the non-consenting parent to appear for the court validation hearing.
- C. The social worker completes and files a *Petition for Court Validation*, DSHS 09-762, in juvenile court. Upon filing the petition, the social worker:
1. Notifies the child's parents (including any alleged father), the child's Indian custodian, if any, and the non-consenting parent if the parent's whereabouts are known, as soon as possible of the time, date, and place of any scheduled validation hearing.
 - a. If the social worker does not provide the initial notification in writing, the social worker also sends written notice to the parents (including any alleged father) and the Indian custodian, if any, using *Notice to Parent/Indian Custodian*, DSHS 09-543.

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- b. The social worker completes *Declaration of Notification*, DSHS 09-767, and files the declaration with the court.
 - 2. Provides the parents (including any alleged father) and the Indian custodian with a copy of the consenting parent's signed consent, a copy of the notice sent to the Tribe, and a copy of the petition or other court documents filed in the proceeding.
 - 3. Provides the non-consenting parent, if whereabouts are known, a copy of the petition.
 - 4. Notifies the child's Tribe as soon as possible by telephone of the date, time, and place of any scheduled validation hearing.
 - a. The social worker also sends written notice of the validation hearing to the child's Tribe, using *Notice to Indian Tribe, Band or Nation*, DSHS 09-541.
 - b. If the child is a member or eligible for membership in more than one Tribe, the social worker provides notice to all such Tribes.
 - c. The social worker completes *Declaration of Notification*, DSHS 09-767, and files the declaration with the court.
 - 5. Provides the child's Tribe with a copy of any petitions or other court documents filed in the proceeding.
- D. If the child's Tribe or Indian custodian requests to intervene in the proceeding, the social worker provides the Tribe or Indian custodian with the information necessary to accomplish the intervention. If the child's Tribe or parent(s)/Indian custodian requests transfer of the proceeding to tribal court, the social worker supports the transfer.

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- E. The court clerk schedules a validation hearing to be held within 48 hours after the petition is filed. However, a hearing cannot be held until more than 10 days after the birth of the Indian child.
- F. The consenting parent(s) must appear personally at the validation hearing to enter on the record the parent's consent to foster care placement.
- G. At the validation hearing, the parent(s) signs the consent before the judge. The social worker or the social worker's legal representative presents the *Consent to Foster Care Placement and Court Certification*, DSHS 09-763, to the court for approval and court certification.
- H. The social worker follows:
 - 1. The placement preferences found in Chapter 07 unless the child's Tribe has changed or waived the preference.
 - 2. The requirements of Chapter 07, section 07.20, regarding notice to the child's extended family.
- I. The social worker returns the child to the parent(s) upon withdrawal of the consent unless one of the following applies:
 - 1. Under RCW 13.34.050, the court has ordered the child taken into custody on a finding of reasonable grounds to believe that:
 - a. The child is dependent; and
 - b. The child's health, safety, and welfare will be seriously endangered if the child is not taken into custody; and
 - c. At least one of the grounds for ordering continuing custody demonstrates a risk of imminent harm to the child.

2. Under RCW 13.34.130, the court orders removal of the child from the home because:
 - a. The child's health, safety, and welfare cannot be adequately protected in the home; and
 - b. The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child.
- J. The social worker notifies the court of the child's return home and obtains an order of dismissal, using the *Motion, Declaration and Order of Dismissal*, DSHS 09-759.
- K. The social worker notifies the child's Tribe, the non-consenting parent (including any alleged father), the child's Indian custodian, and any other party to the validation proceeding when the parent or the department has terminated the consent to place, and the department has returned the child home. CA considers a copy of a signed *Motion, Declaration and Order of Dismissal*, DSHS 09-759, adequate notice of the child's return home.

06.507 SERVICES FOLLOWING PLACEMENT

Following the placement of an Indian child in foster care under a valid voluntary consent, the social worker provides placement services in accordance with the requirements of chapter 07, section 07.70.

06.508 CHANGING VOLUNTARY TO INVOLUNTARY PLACEMENT

- A. Except in emergency circumstances, the social worker notifies the child's Tribe, the parents (including any alleged father), and the Indian custodian, if any, of a decision to change a voluntary foster care placement into an involuntary foster care placement. Except when contrary to the best interests of the child, the social worker gives notice at least 15 calendar days before filing a dependency petition. The worker uses *Notice of Change of Voluntary Placement to Involuntary Placement*, DSHS 09-774, to provide notice. In emergency situations, the social worker follows the procedures in section 06.60.
- B. The social worker does not petition any court for an involuntary foster care placement when basing the petition solely on the prior voluntary child placement.

06.55 PRECONDITIONS FOR FILING A DEPENDENCY, DEPENDENCY GUARDIANSHIP, OR INVOLUNTARY TERMINATION PETITION

- A. Except in emergency situations, the social worker follows the requirements set forth in paragraph B, below, before filing a dependency, guardianship, or involuntary termination petition in juvenile court. In emergency cases the social worker follows the requirements outlined in section 06.60 regarding shelter care placement.
- B. Before filing a dependency, dependency guardianship, or involuntary termination petition in juvenile court, the social worker must:
 - 1. Make **active efforts** to comply with the requirements of Chapter 05 of this manual to prevent the breakup of the Indian family.
 - 2. Comply with the requirements of sections 06.10 through 06.40 regarding verification of tribal court jurisdiction and special requirements applying to federally recognized Indian Tribes.

3. Consult with the child's Tribe and provide the Tribe with any records and documents supporting the decision to file a petition in juvenile court. See Chapter 04 regarding confidentiality.
 4. Seek to formulate with the Tribe a mutually acceptable course of action in the best interests of the child.
 5. Make **active efforts** to agree to family service plans, voluntary service agreements, and legal arrangements, such as restraining orders or protection order, designed to protect the child and eliminate the need for filing a petition in juvenile court.
- C. The social worker does **not** file a dependency, dependency guardianship, or involuntary termination petition in juvenile court when the **only** grounds for such a petition are evidence of:
1. Community or family poverty; or
 2. Crowded or inadequate housing; or
 3. Alleged alcohol abuse or other nonconforming social behaviors on the part of the parent(s) or Indian custodian.
- D. When filing a petition, the social worker only considers the above factors when the worker can demonstrate such factors are directly connected to evidence that the child's health, safety, and welfare is endangered.

06.60 SHELTER CARE PLACEMENT

06.601 VERIFICATION OF JURISDICTION/WARDSHIP

If it is necessary to place an Indian child in shelter care, the social worker verifies if the child is a ward of a tribal court or is a resident of or domiciled within the boundaries of an exclusive jurisdiction Indian reservation. See sections 06.10 through 06.40 for information about jurisdiction. The social worker:

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- A. Contacts the child's Tribe, which determines jurisdiction, for necessary information to make this verification.
- B. If possible, contacts the child's Tribe for verification prior to placing the child.
- C. If, due to the circumstances of the case, it is not possible to contact the child's Tribe or verify jurisdiction prior to placement, makes efforts to contact the Tribe within one working day following placement.
- D. Documents contacts with the child's Tribe in the ICW section of service record.

06.602 CHILD A WARD OF TRIBAL COURT OR DOMICILED/RESIDENT ON AN EXCLUSIVE JURISDICTION INDIAN RESERVATION

- A. If an Indian child is a ward of the tribal court or resident of or domiciled within the boundaries of an exclusive jurisdiction Indian reservation, neither the social worker nor juvenile court may exercise authority to place the child in foster care, unless authorized by the tribal court. See section 06.15(A).
- B. If an Indian child, who is a ward of the tribal court or is resident or domiciled on an exclusive jurisdiction Indian reservation, is located off the reservation, the social worker may, after attempting to contact the Tribe, in emergency situations:
 - 1. Arrange emergency pick up by law enforcement; or
 - 2. Obtain a court order authorizing emergency placement in shelter care in order to prevent imminent physical damage or harm to the child or sexual abuse of the child.

3. Give the child's parent(s) or Indian custodian a copy of the *Parent's Guide to CPS*, DSHS 22-484(X), and a copy of the *Temporary Custody Notification* form, DSHS 09-731, if one of the following places a child in DSHS custody:
 - a. An emergency pickup by law enforcement; or
 - b. A hospital/medical hold; or
 - c. A court order authorizing emergency shelter care placement.
- C. When obtaining a court order for emergency placement, the social worker follows the legal procedures in section 06.605.
- D. A shelter care placement does not extend for a period longer than 72 hours (excluding Saturdays, Sundays and holidays) without an order of the court of competent jurisdiction approving such placement. If the tribal court is unable to issue an order within the 72 hour period, the social worker arranges for a juvenile court shelter care hearing during that period.
- E. If the juvenile court has issued a shelter care order, the social worker immediately seeks dismissal of the juvenile court proceeding as soon as the tribal court exercises jurisdiction over the child.
- F. Following placement, the social worker:
 1. Makes **active efforts** to return the child home;
 2. Takes necessary steps to ensure that a child's shelter care placement ends immediately when the placement is no longer necessary to prevent harm to the child's health, safety, or welfare; and
 3. Immediately returns the child to the child's parent(s) or Indian custodian when the placement ends.

06.603 CHILD NOT A WARD OF TRIBAL COURT AND NOT RESIDENT/DOMICILED ON AN EXCLUSIVE JURISDICTION INDIAN RESERVATION

- A. The social worker may take steps to arrange for emergency pick-up of an Indian child by law enforcement or to obtain a juvenile court order authorizing shelter care placement if the child is:
 - 1. Not a ward of tribal court; or
 - 2. Not resident or domiciled within an exclusive jurisdiction Indian reservation; and
- B. The social worker does not seek shelter care order unless the order is necessary to prevent harm to the child's health, safety, or welfare. The social worker follows the legal procedures of section 06.605.
- C. The social worker gives the child's parent(s) or Indian custodian a copy of the *Parent's Guide to CPS*, DSHS 22-484(X), and a copy of the *Temporary Custody Notification* form, DSHS 09-731, if one of the following places a child in DSHS custody:
 - 1. An emergency pickup by law enforcement; or
 - 2. A hospital/medical hold; or
 - 3. A court order authorizing emergency shelter care placement.
 - 4. Unless the social worker returns a child to the child's parent(s) or Indian custodian within 72 hours, excluding weekends and holidays, following shelter care placement of the child, the worker arranges for a juvenile court shelter care hearing. The court must hold the hearing within 72 hours, excluding weekends and holidays, following the child's shelter care placement.

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- D. Following placement, the social worker:
1. Makes **active efforts** to return the child home;
 2. Takes necessary steps to ensure that the shelter care placement ends immediately when the placement is no longer necessary to prevent imminent harm to the child's health, safety, or welfare; and
 3. Immediately returns the child to the child's parent(s) or Indian custodian when the placement ends.
- E. The initial shelter care placement must not extend for a period longer than 72 hours (excluding Saturdays, Sundays and holidays) unless:
1. The juvenile court transfers the case to tribal court, and the tribal court orders a longer placement period; or
 2. The social worker obtains a juvenile court order approving a longer period of placement.

06.604 INVOLVEMENT OF TRIBAL SOCIAL SERVICES

As soon as possible following knowledge of the need for an emergency shelter care placement of an Indian child, the social worker actively involves the social services program of the child's Tribe in all matters pertaining to the shelter care placement.

06.605 LEGAL PROCEDURES

- A. The social worker must:
1. File a *Dependency Petition*, DSHS 09-428, in Juvenile Court according to Washington State law and an *Addendum to Petition*, DSHS 09-771.

2. Notify the child's parent(s) and/or Indian custodian, if any, and the child's Tribe of the time, date, and place of an initial hearing by the quickest means available. The social worker documents the notification in the ICW section of the case file.
 - a. When providing written notification, the social worker uses the *Temporary Custody Notification*, DSHS 09-731. The social worker also provides the parent(s) or Indian custodian with a copy of the *Parent's Guide to CPS*, DSHS 22-484.
 - b. When possible, the social worker must provide notification to the child's Tribe prior to placing the child in shelter care.
 3. Provide written notification of subsequent shelter care proceedings and the dependency fact-finding hearing to the child's parent(s), including any alleged father, and Indian custodian, if any, and the child's Tribe as required in Section 06.651(C), below.
- B. If the child's Tribe or Indian custodian, if any, requests to intervene in the proceeding, the social worker provides documents and information to use in that intervention. If the child's Tribe, parent(s), or Indian custodian, if any, requests transfer of the proceeding to tribal court, the social worker supports the transfer except as provided in section 06.35.

06.606 PLACEMENT BEYOND 72 HOURS

Federally Recognized Indian Tribes

- A. When the social worker assesses the need for continuing placement beyond 72 hours (excluding Saturdays, Sundays and holidays), the worker immediately contacts the social services program of the child's Tribe to establish whether the Tribe wishes to request a transfer of jurisdiction to the tribal court. The social worker makes necessary forms available to the Tribe:

- *Motion and Order to Transfer Jurisdiction to Tribal Court*, DSHS 09-547
 - *Tribal Court Motion and Order to Accept Jurisdiction*, DSHS 09-548
- B. If the case has not been filed in tribal court prior to a state court issuing an order, a juvenile court must hold a shelter care hearing within the 72 hour period in accordance with RCW 13.34.060. The Tribe does not waive the right to request transfer of jurisdiction at any time by declining to request transfer within the 72 hour period.
1. The social worker takes immediate steps to involve the child's Tribe in the case if the Tribe is not already involved.
 2. When possible, the social worker seeks to present at the initial shelter care hearing the testimony of a qualified expert regarding the need for continued foster care placement of the child. See Chapter 14 for definition of "qualified expert."
 3. If expert testimony is not used in the initial shelter care hearing, the social worker takes immediate steps to involve a qualified expert in the case.
- C. Unless the social worker or the court has previously returned the child to the parent(s) or Indian custodian, the worker requests that the court hold a subsequent shelter care hearing within 30 calendar days of the initial shelter care hearing.
1. If the social worker recommends continued foster care placement at the 30-day shelter care hearing, the worker also presents the testimony of a qualified expert regarding the need for continued foster care placement of the child.

2. If the court orders continued foster care placement following the 30-day shelter care hearing, the social worker requests that the court set a fact-finding hearing as soon as possible, if the court has not already set the case for fact-finding.
3. The social worker makes **active efforts** before the fact-finding to return a child to the custody of the child's parent(s) or Indian custodian, if any, if the worker determines foster care placement is no longer necessary to prevent harm to the child's health, safety, or welfare.
 - a. If the court enters an order for shelter care placement of a child, the social worker obtains a modification of the order prior to returning the child to the custody of the child's parent(s) or Indian custodian, if any.
 - b. When the social worker or the court returns a child to the custody of the child's parent or Indian custodian, the social worker notifies any other parent or Indian custodian, if any, the child's Tribe, and any other party to the proceeding.
 - c. The worker must provide the notification in writing and specify the name and address of the person to whom the child has been returned, unless the safety of the child or care provider would be jeopardized by providing this information.

06.607 LICWAC PROCEDURES

The social worker staffs the case with LICWAC only if the worker has been unable to identify the child's Indian Tribe or at the request of the child's Tribe. See Chapter 10 for LICWAC procedures.

06.608 PLACEMENT PREFERENCES

- A. The social worker follows the foster care placement preferences found in Chapter 07, unless the child's Tribe has changed or waived the preferences.
- B. The social worker may make an emergency shelter care placement not within the placement preferences found in Chapter 07 only if the social worker, in cooperation with the child's Tribe, has made **diligent** and documented **efforts** to place the child within the placement preferences.
- C. When the social worker not does initially place a child in accordance with the placement preferences, the worker **continues efforts** to place the child in accordance with the preference requirements of Chapter 07 as soon as possible.

06.609 SERVICES FOLLOWING PLACEMENT

Once the social worker has placed an Indian child in shelter care, the social worker provides services following placement in accordance with the requirements of Chapter 07.

06.65 DEPENDENCY

06.651 LEGAL PROCEDURES – FACT-FINDING

- A. Except in emergency cases, the social worker follows the requirements of section 06.55 before filing a dependency petition in juvenile court.
- B. In emergency situations, the social worker follows the requirements of Chapter 06.60 regarding shelter care placement.
- C. To commence a dependency proceeding, the social worker, or CA's legal representative, completes and files a *Dependency Petition*, DSHS 09-428, with juvenile court. The social worker also completes and files with the court an *Addendum to Petition*, DSHS 09-771.

- D. The social worker follows the notification procedures below.
1. After filing the dependency petition, the social worker immediately arranges for personal service to the child's parents, including any alleged father, and Indian custodian, if any, with formal Notice and Summons, issued by the Court Clerk, and with *Notice to Parent/Indian Custodian*, DSHS 09-543.
 - a. If the social worker cannot give or arrange for personal service, the worker arranges for notification by registered mail, return receipt requested, to the person's last known address. The worker also arranges for mailing of a copy of the notice by regular mail to the person's last known address.
 - b. The social worker arranges for notice by publication if the worker cannot give or arrange for notice by personal service or registered mail.
 - c. The child's parent(s) and Indian custodian, if any, must receive written notification at least 15 business days prior to the dependency fact-finding hearing if the parent(s) or custodian resides within the state of Washington. The parent(s) and custodian, if any, must receive written notification 10 business days prior to the fact-finding if the parent(s) or custodian lives outside of the state of Washington.
 2. After the social worker or the worker's legal representative files the dependency petition, the worker immediately arranges for formal Notice and Summons, issued by the Court Clerk and *Notice to Federally Recognized Indian Tribe, Band, or Nation*, DSHS 09-541, to the Tribes of which the child may be eligible for membership.

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- a. The social worker arranges for notification to the Tribe's address as listed in Chapter 12 in this manual. The social worker obtains a specific name and address of a tribal representative and sends a copy of the notification directly to that person, by registered mail, return receipt requested, as well as by regular mail.
 - b. If the child is a member of or eligible to be a member of more than one Tribe, the social worker arranges for notification to all such Tribes, following the steps in paragraph "a," above, and follows up with telephone calls.
 - c. The child's Tribe(s) must receive notification at least 15 business days prior to the dependency fact-finding hearing.
3. When the social worker sends written notice to the child's parent(s), the child's Indian custodian, if any, and the child's Tribe, the worker also sends:
 - a. Copies of the petition and scheduling orders;
 - b. *Tribal Intervention/Request for Continuance*, DSHS 09-542, to the child's Tribe; and
 - c. *Parent/Indian Custodian Request for Continuance*, DSHS 09-544, to the child's parent(s) and Indian custodian, if any.
4. **Notice to BIA**
 - a. If the social worker does not know the location or identity of the child's Tribe, parent(s), and Indian custodian, if any, the worker arranges to send notification to BIA by registered mail, return receipt requested, at least 35 calendar days prior to the fact-finding hearing, using *Notice to BIA*, DSHS 09-545. See Chapter 12 for BIA contact information.

- b. The social worker also sends to the BIA a copy of the notices to the parent(s), the Indian custodian, if any, and the child's Tribe and all other background information that may assist the BIA in locating or identifying the child's parent(s), Indian custodian, and/or the child's Tribe.

5. Documentation of Notification

The social worker:

- a. Includes the client case name and case number on the postal confirmation of delivery form to facilitate matching the form with the proper case when the form returns from the Postal Service; and
 - b. Files the original returned confirmation form in the ICW section of the client case file; and
 - c. Files copies of forms and letters sent to the BIA, the child's Tribe(s), parent(s), and Indian custodian, if any, in the ICW section of the client case file.
6. The child's Tribe and/or parent(s) and Indian custodian, if any, may request continuation of the case for at least 20 calendar days from the date of the scheduled fact-finding hearing. To do this, the parties use the *Tribal Intervention/Request for Continuance*, DSHS 09-542, or *Parent/Indian Custodian Request for Continuance*, DSHS 09-544, as applicable.
7. If the child's Tribe or Indian custodian requests to intervene in the proceeding, the social worker provides documents and information related to the intervention. If the child's Tribe requests transfer of the proceeding to tribal court, the social worker supports the transfer except as provided in Chapter 06.35.

8. The social worker provides a copy of the dependency order to the child's parent(s), Indian custodian, if any, the child's Tribe, and any other party to the proceeding.
9. When the court dismisses a dependency proceeding at or before the fact-finding hearing, the social worker provides a copy of the dismissal order to the child's parent(s), Indian custodian, if any, the child's Tribe, and any other party to the proceeding. The social worker uses *Notice of Dependency Dismissal*, DSHS 09-776, to provide notification.

06.652 DISPOSITION

- A. At the dependency disposition, the court may order out-of-home placement of an Indian child only upon proof that:
 1. The social worker has made or provided **active efforts** to eliminate the need for placement.
 2. Continued parental or Indian custodian physical custody is likely to result in serious emotional or physical damage to the child.
 - a. The standard of proof for this finding is "clear, cogent, and convincing evidence."
 - b. The social worker utilizes a qualified expert witness to meet this standard. See Chapter 14 for definition of "qualified expert witness."
- B. If the child is placed in out-of-home care, the social worker must:
 1. Place the child in a specific placement designated by the Tribe, or, if the Tribe designates no specific placement, follow the Tribe's official placement preference order.

2. Follow the placement preferences found in Chapter 07 if the child's Tribe has not designated a specific placement or placement preferences.
3. Follows the requirements of Chapter 07 regarding notice to the child's extended family.

C. Notification of Dispositional Hearing

1. If the dispositional hearing is at a different time than the fact-finding hearing, the social worker notifies the child's parent(s), including any alleged father, the child's Indian custodian, if any, and the child's Tribe of the time, date, and place of the dispositional hearing by the quickest means possible. The social worker documents the notification in the ICW section of the case file.
2. The social worker also provides written notice of the dispositional hearing to the child's parent(s), Indian custodian, if any, and to the child's Tribe. The worker uses the *Notice to Parent/Indian Custodian*, DSHS 09-543, or *Notice to Federally Recognized Indian Tribe, Band or Nation*, DSHS 09-541, as applicable.

- D. The social worker provides a copy of the disposition order to the child's parent(s), Indian custodian, if any, the child's Tribe, and any other party to the proceeding.

06.653 SOCIAL STUDY/REPORT TO THE COURT AND/OR INDIVIDUAL SERVICE AND SAFETY PLAN

- A. Prior to preparing a social study/report to court and/or an Individual Service and Safety Plan (ISSP) for the dependency dispositional hearing, the social worker staffs the case with the designee of the child's Tribe. See Chapter 04 regarding confidentiality. The social worker includes recommendations of the child's Tribe in the report to the court or in the ISSP.

1. If, after the social worker makes diligent efforts to contact the Tribe, a tribal designee remains unavailable, the worker staffs the case with LICWAC in accordance with the procedures in Chapter 10. If the social worker wishes to staff the case with a tribal LICWAC, the social worker seeks to obtain the Tribe's approval for use of the tribal LICWAC.
 2. The social worker includes recommendations of the LICWAC in the report to the court or in the ISSP.
 3. If the child's Tribe subsequently becomes involved, LICWAC involvement will stop unless the child's Tribe requests continued LICWAC involvement.
 4. The child's Tribe may choose not to be involved and also require that the LICWAC not be involved.
 - a. If the child's Tribe declines and does not want LICWAC involvement, then the social worker must ask the Tribe to designate an alternative resource to provide consultation to the social worker on the case.
 - b. If the child's Tribe does not designate an alternative resource, the Regional Administrator, in consultation with the Tribe, designates an Indian expert for consultation.
- B. When the social worker prepares a social study/report to court and/or an ISSP for a dependency dispositional hearing or dependency review hearing, the worker invites the child's Tribe and a qualified expert to play an active role in the preparation of such study. See Chapter 14 for definition of "qualified expert." The worker will describe in detail the role of the child's Tribe and fully state the Tribe's recommendations and such other information provided by the Tribe.

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- C. If the Tribe declines or fails to participate in the social study, the social worker involves a qualified expert to help prepare the study. The social worker may also involve an Indian interpreter in the preparation of the study. See Chapter 14 for definition of "Indian interpreter."
- D. Upon filing the social study/report with the court, the social worker provides a copy of the social study/report to the child's parent(s), Indian custodian, if any, the child's Tribe, and any other party to the proceeding. See Chapter 04 regarding confidentiality.
- E. Subject to the availability of funds and resources and within the department's legal authority to act, the social worker cooperates with and follows all recommendations of the Tribe, qualified expert, or Indian interpreter, as applicable, in the report to court.

06.654 REVIEW HEARING

- A. The social worker notifies the child's parent(s), including any alleged father, the child's Indian custodian, if any, and the child's Tribe of dependency review hearings in juvenile court.
 - 1. The worker uses the following forms, as applicable, for this purpose:
 - *Notice to Parent/Indian Custodian*, DSHS 09-543
 - *Notice to Federally Recognized Indian Tribe, Band, or Nation*, DSHS 09-541
 - *Tribal Intervention/Request for Continuance*, DSHS 09-542
 - *Parent/Indian Custodian Request for Continuance*, DSHS 09-544
 - *Notice of Dependency Dismissal*, DSHS 09-776
 - 2. The social worker sends notice by registered mail, return receipt requested, at least 20 calendar days prior to the scheduled review date.

- B. The social worker follows the requirements of section 06.653 in preparing the report to court and/or the ISSP for the dependency review hearing, involving the Tribe, parents, and caretakers in report preparation.
- C. If the department will recommend removal of a child from the custody of a parent or Indian custodian, the social worker must follow procedures in section 6.652(A) and (B).
- D. The social worker provides a copy of the dependency review order to the child's parent(s), Indian Custodian, if any, the child's Tribe, and any other party to the proceeding.

06.655 SERVICES FOLLOWING PLACEMENT

If CA places an Indian child in foster care following a dependency finding, the social worker provides services following the placement in accordance with Chapter 07.70.

06.656 CHILD'S RETURN HOME AND NOTICE OF DEPENDENCY DISMISSAL

- A. When the court dismisses a dependency proceeding, the social worker provides a copy of the dismissal order to the child's parent(s), the Indian custodian, if any, the child's Tribe, and any other party to the proceeding.
- B. When the social worker returns an Indian child to the custody of a parent or the Indian custodian, if any, the social worker notifies:
 - 1. Any other parent;
 - 2. Another Indian custodian, if any;
 - 3. The child's Tribe; and
 - 4. Any other party to the proceeding.

- C. The social worker provides written notice, specifying the name and address of the person to whom the social worker has returned the child, unless the safety of the child or the care provider would be jeopardized by providing this information.
- D. The social worker uses the *Notice of Dependency Dismissal*, DSHS 09-776, to provide the written notice.

06.70 CHILD IN NEED OF SERVICES

- A. To commence a Child in Need of Services (CHINS) proceeding, the social worker, the child's parent, or the child may complete and file a CHINS petition with the juvenile court.
- B. If the social worker files a CHINS petition regarding an Indian child, the social worker must comply with the requirements of sections 06.10 through 06.40 regarding verification of tribal court jurisdiction.
- C. If the child is a ward of tribal court or is a resident or domiciled on an exclusive jurisdiction Indian reservation, the social worker immediately refers the case to the child's Tribe.
- D. If the child is a resident of or domiciled on a concurrent jurisdiction Indian reservation, the social worker may only file a CHINS petition:
 - 1. After having made **active efforts** to assist the child and the parent(s) or Indian custodian, if any, to file a tribal court proceeding; and
 - 2. Such efforts have been unsuccessful.

The social worker documents efforts in the ICW section of the service record.

- E. If the child is not a ward of tribal court and is not a resident of or domiciled on an exclusive jurisdiction Indian reservation, the social worker contacts a qualified expert approved by the child's Tribe or an Indian interpreter for assistance in communicating with the family regarding provision of reunification services and transfer of the case to tribal court. See Chapter 14 for definition of "qualified expert" and "Indian interpreter."
- F. The social worker does not file a CHINS petition in juvenile court unless the worker has satisfied the CHINS requirements of the *CA Case Services Policy Manual* and the *CA Practices and Procedures Guide*, Chapter 3000.
- G. The social worker follows the notification procedures below:
 - 1. After the social worker files the CHINS petition, the social worker immediately sends notice of the proceeding to the child's Tribe, using *Notice to Tribe of CHINS Proceeding*, DSHS 09-758; or
 - 2. The social worker sends notice to the Tribe when the worker becomes responsible for case plan development or a placement recommendation if one of the following parties files the CHINS petition and the child's Tribe has not been previously notified of the proceeding:
 - a. The Indian child;
 - b. The child's parent(s); or
 - c. The child's Indian custodian, if any.
- H. In arranging foster care placement for the child, the social worker follows the Tribe's placement preferences or foster care placement preferences found in Chapter 07, unless the child's Tribe has changed or waived the preferences.

06.75 DEPENDENCY GUARDIANSHIP

- A. The social worker follows the requirements of section 06.55 before filing a dependency guardianship petition in juvenile court. In developing the plan for dependency guardianship, the social worker places within the Tribe's placement preferences, if known, or follows the placement preferences found in chapter 07.70 unless the child's Tribe has waived or changed the preferences.
- B. Prior to filing a dependency guardianship petition, the social worker staffs the case with a designee from the child's Tribe and obtains tribal recommendations. See chapter 04 regarding confidentiality. If a tribal designee is unavailable, the social worker may staff the case with the LICWAC. See chapter 10 regarding LICWAC procedures.
- C. To commence a dependency guardianship proceeding, the social worker (or the agency's legal representative) completes and files a *Dependency Guardianship Petition*, DSHS 09-453, with the juvenile court. The social worker also completes and files with the court an *Addendum to Petition*, DSHS 09-771.
- D. The social worker follows the notice procedures below.
 1. The social worker provides notice to the parties or potential parties using the following forms, as applicable, as described in subsequent paragraphs:
 - *Notice to Parent/Indian Custodian*, DSHS 09-543
 - *Notice to Federally Recognized Indian Tribe, Band, or Nation*, DSHS 09-541
 - *Tribal Intervention/Request for Continuance*, DSHS 09-542
 - *Parent/Indian Custodian Request for Continuance*, DSHS 09-544

2. After filing the dependency guardianship petition, the social worker immediately takes necessary steps to arrange for the child's parents (including any alleged father) and Indian custodian, if any, to be personally served with formal Notice and Summons. The Court Clerk must issue the Notice and Summons. The social worker must also provide the *Notice to Parent/Indian Custodian*, DSHS 09-543.
 - a. If personal service cannot be given, the social worker arranges to send notification by registered mail, return receipt requested, to the person's last known address.
 - b. The social worker arranges for notice by publication if notice by personal service or by mail cannot be given.
 - c. The child's parent(s) or Indian custodian, if any, must receive written notification at least 15 business days prior to the dependency guardianship fact-finding.
3. After filing the dependency guardianship petition, the social worker immediately arranges for the Court Clerk to issue the Notice and Summons and to send *Notice to Federally Recognized Indian Tribe, Band, or Nation*, DSHS 09-541, to the child's Tribe by registered mail, return receipt requested.
 - a. The social worker arranges to send notification to the Tribe address listed in Chapter 12 below.
 - b. If the child is a member of or eligible to be a member of more than one Tribe, the social worker arranges to send notification to all such Tribes.
 - c. The child's Tribe(s) must receive notification at least 15 business days prior to the dependency guardianship fact-finding hearing.

4. When the social worker sends written notice to the child's parent(s) or Indian custodian, if any, and the child's Tribe, the worker also sends:
 - a. Copies of the petition;
 - b. Scheduling orders, if applicable;
 - c. *Tribal Intervention/Request for Continuance*, DSHS 09-542, to the child's Tribe; and
 - d. *Parent/Indian Custodian Request for Continuance*, DSHS 09-544, to the child's parent(s) or Indian custodian, if any.
5. **Notice to BIA**
 - a. If the social worker does not know the location or identity of the child's Tribe, parent(s), and Indian custodian, if any, the worker arranges to send notification to BIA by registered mail, return receipt requested, at least 35 calendar days prior to the fact-finding hearing, using *Notice to BIA*, DSHS 09-545. See Chapter 12 for BIA contact information.
 - b. The social worker also sends to the BIA a copy of the notices to the parent(s), the Indian custodian, if any, and the child's Tribe and all other background information that may assist the BIA in locating or identifying the child's parent(s), Indian custodian, and/or the child's Tribe.
6. The child's Tribe and/or parent(s)/Indian custodian may request a continuance for at least 20 calendar days from the date of the scheduled fact-finding hearing. CA provides the following forms for this purpose: *Tribal Intervention/Request for Continuance*, DSHS 09-542, and *Parent/Indian Custodian Request for Continuance*, DSHS 09-544.

7. If the child's Tribe or Indian custodian requests to intervene in the proceeding, the social worker supports intervention. If the child's Tribe or parent(s) or Indian custodian, if any, requests transfer of the proceeding to tribal court, the social worker supports the transfer.
- E. At the dependency guardianship fact-finding, the court may grant the guardianship only upon proof that continued parental custody will likely result in serious emotional or physical damage to the child.
1. The social worker must demonstrate provision of **active efforts** to eliminate the need for placement and to preserve the family.
 2. The standard of proof for this finding is "clear, cogent, and convincing" rather than a preponderance of the evidence.
 3. The social worker uses a qualified expert witness to meet this standard. See Chapter 14 for the definition of "qualified expert witness."
- F. The social worker provides a copy of the dependency guardianship order to the child's parent(s), the child's Indian custodian, if any, the child's Tribe, the guardian, and any other party to the proceeding.
- G. The social worker notifies the child's parent(s), including any alleged father, the child's Indian custodian, if any, the child's *guardian ad litem*, and the child's Tribe of any proceeding for modification or termination of the dependency guardianship order. The worker provides the following forms, as applicable:
- *Notice to Parent/Indian Custodian*, DSHS 09-543
 - *Notice to Federally Recognized Indian Tribe, Band, or Nation*, DSHS 09-541
 - *Tribal Intervention/Request for Continuance*, DSHS 09-542
 - *Parent/Indian Custodian Request for Continuance*, DSHS 09-544

- H. When the state court modifies, terminates, or dismisses dependency guardianship order, the social worker provides a copy of the modification, termination, or dismissal order to the child's parent(s), Indian custodian, if any, the child's Tribe, the dependency guardian, and any other party to the proceeding.
- I. When the state court returns an Indian child to the custody of a parent(s) or Indian custodian, if any, the social worker notifies any other parent, Indian custodian, the child's Tribe, and any other party to the proceeding. The social worker provides written notification and specifies the name and address of the person to whom the child has been returned, unless the safety of the child or the care provided would be jeopardized by providing this information.
- J. After the court establishes a dependency guardianship, the social worker provides services following placement as required in chapter 07, section 07.73.

06.80 INVOLUNTARY TERMINATION OF PARENTAL RIGHTS

- A. The social worker follows the requirements of Chapter 06.55 before filing a petition for involuntary termination of parental rights in Juvenile Court.
- B. Prior to filing a termination petition, the social worker staffs the case with a designee from the child's Tribe and obtains tribal recommendations. See Chapter 04 regarding confidentiality. If a tribal designee is unavailable, the social worker consults with LICWAC. See Chapter 10 regarding LICWAC.
- C. To commence a termination proceeding, the social worker or the agency's legal representative completes and files a *Termination Petition*, DSHS 09-766, with the juvenile court. The social worker also completes and files with the court an *Addendum to Petition*, DSHS 09-771.

D. The social worker follows the steps below:

1. After filing the termination petition, the social worker immediately arranges for the child's parent(s), including any alleged father, and Indian custodian, if any, to be personally served with formal Notice and Summons, issued by the Court Clerk, and with *Notice to Parent/Indian Custodian*, DSHS 09-543.
 - a. If the social worker cannot arrange for personal service, the worker arranges for notification to be sent by registered mail, return receipt requested, to the person's last known address.
 - b. The social worker arranges for notice by publication if notice by personal service or by mail cannot be given.
 - c. The child's parent(s) and Indian custodian, if any, must receive written notification at least 15 business days prior to the termination fact-finding.
2. After filing the termination petition, the social worker immediately arranges for formal Notice and Summons, issued by the Court Clerk, and *Notice to Federally Recognized Indian Tribe, Band or Nation*, DSHS 09-541, to be sent to the child's Tribe by registered mail, return receipt requested.
 - a. The social worker arranges for notification to be sent to the Tribe's address as listed in Chapter 12 in this manual.
 - b. If the child is a member of or eligible to be a member of more than one Tribe, the social worker arranges for notification to be sent to all such Tribes.

- c. The child's Tribe(s) must receive notification at least 15 business days prior to the termination fact-finding.
- 3. When the social worker sends written notice to the child's parent(s), the child's Indian custodian, if any, and the child's Tribe, the social worker also sends:
 - a. Copies of the petition;
 - b. Any scheduling orders, if applicable;
 - c. *Tribal Intervention/Request for Continuance*, DSHS 09-542, to the child's Tribe; and
 - d. *Parent/Indian Custodian Request for Continuance*, DSHS 09-544, to the child's parent(s) and Indian custodian, if any.
- 4. **Notice to BIA**
 - a. If the social worker does not know the location or identity of the child's Tribe, parent(s), and Indian custodian, if any, the worker arranges to send notification to BIA by registered mail, return receipt requested, at least 35 calendar days prior to the fact-finding hearing, using *Notice to BIA*, DSHS 09-545. See Chapter 12 for BIA contact information.
 - b. The social worker also sends to the BIA a copy of the notices to the parent(s), the Indian custodian, if any, and the child's Tribe and all other background information that may assist the BIA in locating or identifying the child's parent(s), Indian custodian, and/or the child's Tribe.

5. The child's Tribe and/or parent(s) or Indian custodian, if any, may request the case be continued for at least 20 calendar days from the date of the scheduled fact-finding hearing. The Tribe may use *Tribal Intervention/ Request for Continuance*, DSHS 09-542, and the parent(s) or Indian custodian uses *Parent/Indian Custodian Request for Continuance*, DSHS 09-544.
 6. If the child's Tribe or Indian custodian requests to intervene in the proceeding, the social worker supports intervention. If the child's Tribe, parent(s), or Indian custodian, if any, requests transfer of the proceeding to tribal court, the social worker supports the transfer.
- E. The state court may terminate the parent-child relationship of an Indian child and the child's parent(s) only upon proof, **beyond a reasonable doubt**, that continued parental custody will likely result in serious emotional or physical damage to the child and that the social worker has made or provided **active efforts** to eliminate the need for placement and to preserve the family. The social worker uses a qualified expert witness to meet this standard. See Chapter 14 for definition of "qualified expert witness."
- F. The social worker provides a copy of the termination order to the child's parent(s), the child's Indian custodian, if any, the child's Tribe, and any other party to the proceeding.
- G. The social worker follows:
1. Tribal preferences or the placement preferences found in Chapter 07, section 07.05, unless the child's Tribe has changed or waived the preferences.
 2. The requirements of Chapter 07.20 regarding notice to the child's extended family.

- H. When the state court dismisses a termination proceeding, the social worker provides a copy of the dismissal order to the child's parent(s), the child's Indian custodian, if any, the child's Tribe, and any other party to the proceeding.
- I. When a court terminates the rights of a child's parent(s) involuntarily, the social worker provides services following placement as required in chapter 07, section 07.74.

06.85 VOLUNTARY RELINQUISHMENT/TERMINATION OF PARENTAL RIGHTS AND CONSENT TO ADOPTION

06.851 INTRODUCTION

- A. The social worker does not accept a voluntary consent to relinquishment/termination of parental rights or adoption of an Indian child until the social worker has followed the:
 - 1. Procedures in Chapter 06.10 through 06.40 regarding verification of tribal jurisdiction and special requirements that apply to Washington State Indian Tribes, and
 - 2. Consent to relinquishment/termination or adoption procedures described in this section.
- B. Voluntary consents to relinquishment/termination or adoption are not valid unless the parent signs the consent before a tribal or juvenile court/superior court judge more than **10 calendar days** after the child's birth and unless the judge approves the consent.

06.852 CHILD A WARD OF TRIBAL COURT OR RESIDENT/DOMICILED ON AN EXCLUSIVE JURISDICTION INDIAN RESERVATION

- A. If a parent seeks to voluntarily consent to relinquishment/termination of parental rights or adoption of an Indian child, the social worker verifies if the child is a ward of tribal court or is a resident or domiciled within the boundaries of an exclusive jurisdiction Indian reservation. See Chapter 06.10 through 06.40 for information about jurisdiction.
- B. If the child is a ward of tribal court or resident/domiciled on an exclusive jurisdiction Indian reservation, the social worker:
 - 1. Informs the parent that the Tribe has exclusive jurisdiction to approve the relinquishment/termination or adoption.
 - 2. Assists the parent, at the request of the Tribe's social service program, to obtain tribal court approval of the consent to relinquishment/termination as may be appropriate under the circumstances.

06.853 CHILD NOT A WARD OF TRIBAL COURT OR NOT RESIDENT/DOMICILED ON AN EXCLUSIVE JURISDICTION INDIAN RESERVATION

- A. When a parent seeks to voluntarily consent to relinquishment/termination of parental rights or adoption of an Indian child who is not a ward of tribal court and is not resident/domiciled on an exclusive jurisdiction Indian reservation, the social worker informs the parent of:
 - 1. Requirements regarding placement preference, notification of the child's Tribe and extended family, and court validation of the consent.
 - 2. The possibility of relinquishing/terminating parental rights or pursuing the adoption through a tribal court proceeding.

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3. The name, address, and phone number of a contact person from the child's Tribe.
 4. The rights of adopted Indian children to obtain adoption record information.
- B. The social worker uses *Relinquishment and Adoption Information to Parent of Indian Child*, DSHS 09-769, to provide the information required in paragraph A, above. The social worker gives the original of the form to the parent and puts a copy in the service file.
- C. When the social worker knows the identity of the prospective adoptive parents, the worker informs the prospective adoptive parents of:
1. Requirements regarding placement preference, notification of the child's Tribe and extended family, and court validation of the parent's consent.
 2. The possibility of pursuing the adoption through a tribal court proceeding.
 3. The possibility of receiving assistance through the Adoption Support Program.
 4. The name, address, and phone number of a contact person with the child's Tribe.
 5. The right of adopted Indian children to obtain adoption record information.
- D. The social worker uses *Information To Prospective Adoptive Parent of Indian Child*, DSHS 09-778, to provide the information required in paragraph C, above. The social worker gives the original of the form to the prospective adoptive parents and puts a copy in the service file.

- E. The social worker encourages the child's parent to contact an Indian interpreter or a representative of the Tribe's social services program to ensure that the consent is voluntary and that the parent understands what the parent is doing. See Chapter 14 for definition of "Indian interpreter."
 - 1. The social worker documents the encouragement in the ICW section of the service record. If the worker refers the parent to an identified individual, the worker includes in the ICW section of the service record documentation of the referral date and the name of the individual to whom the worker made the referral.
 - 2. Upon request, the social worker provides the documentation to the child's Tribe.

06.854 PRE-VALIDATION SERVICES

- A. Prior to assisting a parent of an Indian child to obtain state court validation of a voluntary consent to relinquishment/termination or adoption, the social worker makes **active efforts** to provide the parent with services designed to prevent the breakup of the Indian family and to keep the child with the parent. In providing such services, the worker consults with the social services program of the child's Tribe when possible.
- B. The social worker seeks to identify, locate, and notify the non-consenting parent before helping a parent obtain court validation of a voluntary consent to relinquishment/termination or adoption.

06.855 INVOLVEMENT OF TRIBAL SOCIAL SERVICES

Before seeking validation of a voluntary consent to relinquishment/termination or adoption in juvenile/superior court, the social worker:

- A. Encourages the parent to contact the child's Tribe regarding available services that may help the parent retain custody of the child or further the child's family and tribal relationship.
 - B. Documents in the ICW section of the service record efforts to have the parent contact the child's Tribe regarding available services.
 - 1. If the social worker refers the parent to an identified individual within the child's Tribe, the social worker includes in the ICW section of the service record documentation the date of the referral and the name of the person to whom the worker made the referral.
 - 2. The social worker provides the documentation to the child's Tribe, if requested.
- 06.856 **EXPLANATION OF CONSENT TO RELINQUISHMENT/TERMINATION OR ADOPTION**
- A. The social worker explains the consent form, *Relinquishment, Consent to Termination/Adoption, and Court Certification*, DSHS 09-764, to the parent of an Indian child prior to obtaining the parent's signature on the form. The social worker uses an Indian interpreter, when possible, to explain the form to the parent. See Chapter 14 for definition of "Indian interpreter."
 - B. The social worker requires the parent to read the consent form prior to obtaining the parent's signature on the form.
 - 1. If the social worker has any doubt about the parent's ability to read and understand the consent form, the worker must read and explain the form to the parent.
 - 2. If there is any doubt about the parent's ability to understand English, the social worker arranges to have the form read and explained to the parent in the parent's primary language.

- C. The social worker obtains the parent's signature on the consent form acknowledging that the parent has read the consent form, understands the consent form, and wishes to consent to relinquishment/termination of parental rights or adoption of the child.
 - 1. The social worker gives the parent a copy of the signed consent form.
 - 2. The social worker explains to the parent that:
 - a. The **consent is not valid until** the parent also signs the form in court and a **judge approves** the consent; and
 - b. The parent must sign the consent in court, and an impartial, competent person who is selected by the parent and who is at least 18 years of age must witness the signing.
- D. Pending court approval of the parent's consent to relinquishment/termination or adoption, the social worker does not place an Indian child in the temporary custody of the prospective adoptive parents/placement agency unless the worker places the child in accordance with:
 - 1. Chapter 06.50, VOLUNTARY CONSENT TO PLACE IN FOSTER CARE; or
 - 2. Chapter 06.60, SHELTER CARE PLACEMENT; or
 - 3. Chapter 06.65, DEPENDENCY.

06.857 VALIDATION PROCEDURE

- A. To obtain court validation of a parent's consent, the social worker:
 - 1. Files a petition for relinquishment in juvenile or superior court;

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2. Uses *Petition for Relinquishment and Termination of Parent-Child Relationship*, DSHS 09-474, and attaches the consent form signed by the parent to the petition; and
 3. Completes and files with the court a *Declaration of Adoption Facilitator*, DSHS 09-765.
- B. Upon filing the relinquishment petition, the social worker:
1. Provides the parent(s), including any alleged father, with at least 20 calendar days written notice of the date, time, and place of any court proceeding to validate the consent to relinquishment. The worker uses *Notice and Summons (Relinquishment/Termination/Adoption)*, DSHS 09-770. The social worker arranges for notice:
 - a. To be personally served on the parent(s), including any alleged father;
 - b. To be sent by registered mail, return receipt requested, to the person's last known address if personal service cannot be given;
 2. Provides the consenting parent(s), including any alleged father, with a copy of the consenting parent's signed consent, a copy of the notice sent to the child's Tribe, and a copy of any petitions or other court documents filed in the proceeding.
 3. Provides the child's Tribe with at least 20 business days written notice of the date, time, and place of any court proceeding.
 - a. The social worker provides the Tribe with copies of:

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- *Notice to Parent/Indian Custodian*, DSHS 09-543
 - *Notice to Federally Recognized Indian Tribe, Band, or Nation*, DSHS 09-541
 - *Tribal Intervention/Request for Continuance*, DSHS 09-542
 - *Parent/Indian Custodian Request for Continuance*, DSHS 09-544
- b. The social worker sends notice by registered mail, return receipt requested.
- c. If the child is a member or eligible to be a member of more than one Tribe, the social worker sends notice to all such Tribes.
- 4. Provides the child's Tribe with a copy of the parent's signed consent and a copy of any petitions or other court documents filed in the proceeding.
- D. If the child's Tribe requests to intervene in the proceeding, the social worker supports intervention. If the child's Tribe or parent(s) requests transfer of the proceeding to tribal court, the social worker supports the transfer.
- E. The consenting parent(s) must appear **in person** at the relinquishment hearing to enter on the record the parent's consent to relinquishment/termination or adoption.
- F. At the relinquishment hearing, the parent(s) signs the consent before the judge.
 - 1. An impartial, competent person, at least 18 years of age, who is selected by the parent must witness the parent's in-court signature. The consent form must contain a statement identifying the witness by name, address, and relationship to the parent.

2. The social worker or the social worker's legal representative presents the consent form to the court for approval and court certification. The worker or legal representative uses *Relinquishment, Consent to Termination/Adoption, and Court Certification*, DSHS 09-764.
- G. Upon entry of an order approving the relinquishment and terminating parental rights, the social worker provides a copy of the termination order to the consenting parent(s), any parent whose rights have not been terminated, and any other party to the proceeding.
- H. The social worker follows the:
 1. Tribal placement preferences or the preferences found in Chapter 07, section 07.05 unless the child's Tribe has changed or waived the preferences; and
 2. Follows the requirements of Chapter 07, section 07.20 regarding notice to the child's extended family.

06.858 WITHDRAWAL OF CONSENT

The parent(s) of an Indian child may **withdraw consent** to relinquishment/termination or adoption **at any time before entry** of the adoption decree. See chapter 08, sections 08.90 and 08.125, for procedures governing the setting aside or termination of an adoption.

- A. If a parent of the Indian child withdraws consent to relinquishment/termination or adoption prior to entry of the adoption decree, the social worker must promptly return the child to the parent's custody unless:
 1. The parent voluntarily consents to foster care placement of the child. See Chapter 06.50 regarding voluntary consent to foster care placement; or

2. A court previously entered an order for foster care placement, the order remains in full force and effect; or
 3. Return of custody would likely cause an emergency resulting in harm to the child's health, safety, or welfare.
- B. The social worker returns custody to the parent(s) unless a law enforcement pick-up has been initiated or a shelter care/pick-up order has been entered. See Chapter 06.60 regarding shelter care placement.
- C. If the social worker returns the child to the parent(s)' custody following withdrawal of the consent, the worker, in cooperation with the social services program of the child's Tribe, assists the child to make as successful a return to the custody of the parent(s) as possible. Assistance includes:
1. Helping the child adjust emotionally and psychologically to the change in placement.
 2. Helping the parent(s) to understand and effectively meet the child's needs.
 3. Helping the foster/pre-adoptive family adjust to the loss of the child.
 4. Assisting the child make a successful transition back to parental custody.
 5. Using a qualified expert to help the parent(s), child, and foster/pre-adoptive family or placement facility, if necessary. See Chapter 14 for definition of "qualified expert."

06.859 WITHDRAWAL OF CONSENT TO ADOPTION AFTER FINAL DECREE

- A. Only within the first two years after the entry of a final decree of adoption of an Indian child, the parent may withdraw consent to the adoption on grounds that consent was obtained through fraud or duress. The parent may petition the court to vacate the adoption decree.
- B. Upon a finding that the consent was obtained through fraud or duress, the court must vacate the decree and may return the child to the parent or order other placement.
- C. See section 06.858, above, for requirements and limitations on returning the child to the parent as well as guidelines for assisting the child and parent to adjust to reconciliation.

06.8510 LEGAL PROCEDURES FOR TERMINATION

The social worker complies with the following procedures regarding termination of parental rights under chapter 26.33 RCW, the adoption statute. The termination procedures apply when one parent has relinquished parental rights and the other parent, including any alleged father, has not relinquished parental rights.

- A. "Parent" and "alleged father" as used in this section mean a parent or alleged father whose parental rights have not been previously terminated.
- B. Pending court approval of the relinquishing parent's consent to relinquishment/termination or adoption, the social worker does not place an Indian child in the temporary custody of the prospective adoptive parents/placement agency unless the worker places the child in accordance with:
 - 1. Chapter 06.50, VOLUNTARY CONSENT TO FOSTER CARE PLACEMENT; or
 - 2. Chapter 06.60, SHELTER CARE PLACEMENT; or
 - 3. Chapter 06.65, DEPENDENCY.

- C. The social worker, or the agency's legal representative, completes and files a termination of parental rights petition in superior or juvenile court, using *Petition for Termination of Parent Child Relationship*, DSHS 09-474. The social worker also completes and files with the court a *Declaration of Adoption Facilitator*, DSHS 09-765.
- D. Upon filing the termination petition, the social worker:
 - 1. Provides the non-consenting parent, including any alleged father, with at least 20 calendar days for parents in-state and 30 calendar days for parents out of state written notice of the date, time, and place of any court proceeding to terminate parental rights. The worker uses *Notice and Summons (Relinquishment/Termination/Adoption)*, DSHS 09-770.
 - a. The social worker arranges for the notice to be personally served on the parents, including any alleged father.
 - b. If personal service cannot be given, the social worker arranges for notice to be sent by registered mail, return receipt requested, to the person's last known address.
 - c. The social worker arranges for notice by publication if notice by personal service or notice by mail cannot be given.
 - 2. Provide the non-consenting parent, including any alleged father, with a copy of the consenting parent's signed consent to relinquishment/termination or adoption and sends a copy of the notice to the child's Tribe, along with a copy of any petitions or other court documents filed in the proceeding.
 - 3. Provides the child's Tribe with at least 20 business days written notice of the date, time, and place of any court proceeding to terminate parental rights, using *Notice to Federally Recognized Indian Tribe, Band or Nation*, DSHS 09-541.

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- a. The social worker sends notice by registered mail, return receipt requested.
 - b. If the child is a member or eligible to be a member of more than one Tribe, the social worker sends notice to all such Tribes.
 - c. If the social worker does not know the location or identity of the child's Tribe and/or parent(s) and/or Indian custodian, if any, the worker arranges for notification to send notification to the BIA by registered mail, return receipt requested, at least 35 calendar days prior to a fact-finding hearing, using *Notice to BIA*, DSHS 09-945.
- 4. Provides the child's Tribe with a copy of the consenting parent's signed consent and a copy of any petitions or other court documents filed in the proceeding.
- E. If the child's Tribe requests to intervene in the proceeding, the social worker supports intervention. If the child's Tribe or parent(s) requests transfer of the proceeding to tribal court, the social worker supports the transfer.
- F. A state court may terminate the parent-child relationship of an Indian child and the child's non-consenting parent or non-consenting alleged father, where paternity has been claimed or established, only upon proof, **beyond a reasonable doubt**, that continued parental custody will likely result in serious emotional or physical damage to the child and that the social worker has made or provided **active efforts** to eliminate the need for placement and to preserve the family. The social worker uses a qualified expert witness to meet this standard. See Chapter 14 for the definition of qualified expert witness.
- G. The social worker provides a copy of the termination order to the parent whose rights are terminated pursuant to the order, any parent whose rights have not been terminated, and any other party to the proceeding.

06.8511 SERVICES FOLLOWING PLACEMENT

When a state court has terminated the rights of a child's parent(s) under chapter 26.33 RCW, the social worker provides services following placement as required in chapter 07, section 07.74.

06.90 OPEN ADOPTION AGREEMENTS

- A. RCW 26.33.295 provides that the parties to an adoption proceeding may enter into agreements regarding future communication with or contact between child adoptees, adoptive parents, and birth parents. These agreements are not legally enforceable unless the terms are set forth in a written court order entered in accordance with the statutory provisions.
1. An agreement need not discuss the identity of the parties to be legally enforceable.
 2. The court cannot enter a proposed order unless the terms of the order are approved in writing by:
 - a. The prospective adoptive parents;
 - b. Any birth parent whose parental rights have not been terminated; and
 - c. The CA social worker, if the child is in the custody of DSHS or a child placing agency at the time of the proposed agreement; and
 - d. An attorney or a *guardian ad litem* representing the child in the proceeding.
 3. The court may not enter a proposed order unless the court finds that the terms of the order are in the child's best interests.

4. Failure to comply with the terms of an agreed order regarding communication or contact is not a basis for setting aside an adoption decree. Agreed orders may be enforced through a civil action.
- B. If all parties to an adoption have reached a clear agreement regarding continuing contact between the child and the child's birth parents, the social worker will assist the parties to include terms of their agreement in a proposed court order separate and apart from the termination order and the adoption decree.
1. Although RCW 26.33.295 does not specifically address contact or communication between the child and the extended birth family members, the parties to the adoption enter into such an arrangement under provisions of chapter 26.10 RCW regarding non-parental visitation.
 2. If all parties to an adoption have reached a clear agreement regarding continuing contact between the child and members of the child's extended birth family, the social worker will assist the parties to set forth their agreements in an agreed order separate and apart from the termination order and the adoption decree.